

Amend Section 19131 of the Personal Income Tax Law to provide a rebuttable presumption that the late filing penalty does not apply when, under certain circumstances, the corresponding federal late filing penalty is determined not to apply.

Source: Honorable Dean Andal

Under current Section 19131 of the Revenue and Taxation Code, a penalty is imposed when a taxpayer fails to file a return on or before its due date (determined with regard to extensions), unless the failure is due to reasonable cause and not due to willful neglect. This proposal would create a presumption that the late filing penalty does not apply when the taxpayer has filed a federal return after its due date, the Franchise Tax Board proposes a deficiency based upon a final federal determination, and the Internal Revenue Service abates the federal late filing penalty based upon reasonable cause. The Franchise Tax Board may rebut the presumption by establishing, through a preponderance of the evidence, that the late filing of the California return was not due to reasonable cause or was due to willful neglect.

Section 19131 of the Revenue and Taxation Code is amended to read:

19131. (a) If any taxpayer fails to make and file a return required by this part on or before the due date of the return or the due date as extended by the Franchise Tax Board, then, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, 5 percent of the tax shall be added to the tax for each month or fraction thereof elapsing between the due date of the return (determined without regard to any extension of time for filing) and the date on which filed, but the total penalty shall not exceed 25 percent of the tax. In the case of a commencing corporation, the penalty shall apply to all tax accruable on the due date of the return. The penalty so added to the tax shall be due and payable upon notice and demand from the Franchise Tax Board.

(b) In the case of an individual or fiduciary who fails to file a return of tax required by this part within 60 days of the date prescribed for filing of that return (determined with regard to any extension of time for filing), unless it is shown that the failure is due to reasonable cause and not due to willful neglect, this penalty shall not be less than the lesser of one hundred dollars (\$100) or 100 percent of the amount of tax required to be shown on the return.

(c) For purposes of this section, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(d) If any failure to file any return is fraudulent, subdivision (a) shall be applied by:

(1) Substituting "15 percent" for "5 percent," and

(2) Substituting "75 percent" for "25 percent."

(e) This section shall not apply to any failure to pay any estimated tax required by Section 19025 or 19136.

(f)(1) Notwithstanding subdivision (a), the penalty described in this section is presumed not to apply if, with respect to the same taxable year:

(A) A taxpayer fails to make and file a return required by this part on or before the due date of the return (determined with regard to any extension of time for filing) and fails to make and file a return required by section 6012 of the Internal Revenue Code on or before the due date of the return (determined with regard to any extension of time for filing).

(B) The Franchise Tax Board proposes a deficiency assessment that is based upon a final federal determination, and

(C) The Commissioner of Internal Revenue or other officer of the United States determines that the penalty described in section 6651(a)(1) of the Internal Revenue Code does not apply because the failure to file the federal return on or before the date prescribed for its filing was due to reasonable cause and not due to willful neglect.

(2) The Franchise Tax Board may rebut the presumption described in paragraph (1) by establishing, through a preponderance of the evidence, that the taxpayer's failure to make and file a return required by this part was not due to reasonable cause or was due to willful neglect.